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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,716	10/27/2003	Jeff Ciarlo	0903	1584

7590 05/07/2004

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EXAMINER
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LE, TAN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/693,716

Applicant(s)

CIARLO, JEFF

Examiner

Tan Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-8 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/27/03.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This is the first office action for Application No. 10/693,716. This application contains 8 claims numbered 1-8.
2. The IDS filed 10/27/03 has been reviewed and considered.

***Claim Objections***

3. Claims 2-8 are objected to because of the following informalities: Capital "Claim" through out the claims should be changed to -- claim --. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention.

See MPEP § 2173.05(d).

Claim 2 recites "securing means interior thereto between said barrier and the post" (lines 3-4). This phrase is unclear because securing means appears to be part of the barrier, thus the securing means itself cannot be between itself and the post.

Claim 3 recites the limitation "said rearwardly extended support portion" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "said front side portion" in line 4, and "said barrier rearwardly extending portions" (line 7). There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "said rearwardly extending portions" in lines 2 and 6. There is also insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,369,925 to Vargo.

Regarding claims 1 and 3-4, the claimed invention reads on Vargo as follows: a post protector comprising a barrier (10) having contiguous front and rear portions wherein the rear portion has two extended support portion (35, 38, Fig. 2) extending horizontally rearwardly beyond the post from each side of the post; and the front portion

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has two vertical panels (17, 22) extending respectively forwardly from the rear portions away from the post and together forming a vertical prow-like vertex connection there between.

Regarding claim 6, Vargo also shows the barrier having oblique vertical bends between the front panel portions and respective adjacent extended side support portions (21).

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,088,229 to Jacoby et al.

Claimed invention (1-5) reads on Jacoby et al. as follows: a barrier (Fig. 2 or 5) having contiguous front and rear portions wherein the rear portion has two extended support portion extending horizontally rearwardly beyond the post, the barrier also having a securing means (35a) interior thereto between two front vertical panels and the post 17 and the front portion has two vertical panels (45c, 46c) extending respectively forwardly from the rear portions away from the post and together forming a vertical prow-like vertex connection there between (47).

Regarding claim 6, Jacoby et al. also shows the barrier having oblique vertical bends (45) between the front panel portions and respective adjacent extended side support portions (21).

Regarding claims 7, Jacoby also further shows the securing means (48, 49) and between the barrier rearwardly extending portions (48, 49) and adjacent the front vertex prow-like connection.

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Regarding claim 8, Jacoby et al. also shows a central beam portion at the bottom (the base plate 35 generally ) being secured to the floor.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

4,998,947 to Dostal et al.

3,717,968 to Olsen et al.

4,012,878 to Ellingson

6,257,557 to Anderson et al.

4,186,531 to Okolischan

The above patents disclose various types of posts or corners protector.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244.

The examiner can normally be reached on Mon-Fri from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le  
April 29, 2004.



LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER